

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Audrey L. Kimner,

Plaintiff,

vs.

The State of South Carolina; Berkeley
County South Carolina; William J. Wylie,
Jr.,

Defendants.

Civil Action No. 2:24-cv-1966-CMC

ORDER

This matter is before the court on Plaintiff's *pro se* Complaint filed September 1, 2022. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings. On May 29, 2024, the Magistrate Judge entered a Proper Form Order and Order and Notice, notifying Plaintiff of deficiencies in her Complaint and allowing an opportunity to amend. ECF Nos. 8, 9.

On June 27, 2024, the Magistrate Judge issued a Report and Recommendation ("Report") recommending this matter be summarily dismissed without prejudice and without leave for further amendment. ECF No. 12. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if she failed to do so. Plaintiff filed a "Motion to vacate fraud order immediately and reassign district judge in Charleston, S.C. Proper Jurisdiction." ECF No. 14.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection

is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

The Magistrate Judge recommends dismissal because the complaint fails to provide sufficient factual allegations to show Plaintiff is entitled to relief, as it lacks factual basis as to how Defendants violated the ADA or breached a contract with her. ECF No. 12 at 4-5. In addition, it recommends Judge Wylie be dismissed due to judicial immunity. *Id.* at 5.

Plaintiff’s motion asserts the proper form order shows fraud and retaliation because she sued Judges Hodges and Currie. ECF No. 14. She requests her case be reassigned to a judge in Charleston, South Carolina and asserts she “filed properly under diversity under breach of contract for theft of all awarded asserts.” *Id.* at 1. She argues the orders “need to be vacated from 2011 to date, as all orders are moot, fraud upon the court and unenforceable.” *Id.* Finally, she seeks to have the case reassigned to other judges but not a magistrate judge and removed from the Columbia court. *Id.* at 2.

Plaintiff’s motion does not object to the reasoning or conclusions of the Report for dismissal. She does not set forth additional factual information or respond to the recommendation for dismissal of Judge Wylie due to judicial immunity. Instead, she only attacks the judges

presiding over her case.¹ However, in an abundance of caution, the court has undertaken a *de novo* review of this action, and agrees with the Magistrate Judge the case should be dismissed.

After a *de novo* review of the record in this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's motion, the court agrees with the conclusions of the Magistrate Judge. The court therefore adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff's Complaint is hereby dismissed without prejudice and without further leave to amend.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
July 24, 2024

¹ This is the fourth lawsuit Plaintiff has filed in this court. See Case Nos. 3:21-cv-03776; 2:22-cv-2943; 3:23-cv-4212; 2:24-cv-1966. She has challenged the findings of the undersigned in previous cases, appealed, moved for recusal, and even filed a lawsuit against the undersigned and Magistrate Judge Hodges, which was dismissed by other judges in this court. She has not been able to bring any of her cases into proper form to survive initial review.